



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA-HQ-OAR-2011-0542; FRL-9803-6]

Supplemental Determination for Renewable Fuels Produced Under the Final RFS2 Program

From Grain Sorghum; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correcting amendment.

SUMMARY: In the December 17, 2012 Federal Register, EPA published a final rule that determines that grain sorghum ethanol qualifies as a renewable fuel under the RFS Program based on a lifecycle greenhouse gas analysis for grain sorghum ethanol. This action corrects typographical errors contained in the December 17, 2012, final rule.

DATES: Effective on [insert date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Jefferson Cole, Office of Transportation and Air Quality, Transportation and Climate Division, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460 (MC: 6041A); telephone number: 202-564-1283; fax number: 202-564-1177; email address: cole.jefferson@epa.gov.

SUPPLEMENTARY INFORMATION: This action corrects typographical errors in the regulatory text section of the final rule published on December 17, 2012. Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. There is good cause for making this action final without prior proposal and opportunity for comment because the changes to this rule are minor corrections of typographical errors, are noncontroversial, and do not substantively change the agency actions taken in the final rule. Notice and comment is unnecessary, because these changes do not affect the rights or obligations of outside parties, and do not alter the requirements of the regulations published on December 17, 2012, except to the extent that the regulatory provisions are amended to correct typographical errors. We find that this constitutes good cause under 5 U.S.C. 553(b)(B). Section 307(d) of the CAA states that in the case of any rule to which section 307(d) applies, notice of proposed rulemaking must be published in the Federal Register (CAA § 307(d)(3)). The promulgation or revision of regulations for fuels or fuel additives under section 211 of the CAA is generally subject to section 307(d). However, section 307(d) does not apply to any rule referred to in subparagraphs (A) or (B) of section 553(b) of the APA.

Specifically, EPA is correcting the final rule to indicate that the recordkeeping requirements for the grain sorghum ethanol pathway regulatory text in 40 CFR Section 80.1454(k)(1) should reference 40 CFR Section 80.1454 (f)(10) rather than (f)(1). *See* 77 FR

74592. In addition, EPA is amending 40 CFR Section 80.1454(k)(2) to include non-substantive introductory text mistakenly omitted from the final rule.

EPA also finds that there is good cause under APA section 553(d)(3) for these corrections to become effective on the date of publication of this action. Section 553(d)(3) of the APA allows an effective date less than 30 days after publication “as otherwise provided by the agency for good cause found and published with the rule.” 5 U.S.C. 553(d)(3). The purpose of the 30-day waiting period prescribed in APA section 553(d)(3) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Today’s rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today’s action merely corrects non-substantive errors in the regulatory text of a prior rulemaking. For these reasons, EPA finds good cause under APA section 553(d)(3) for these corrections to become effective on the date of publication of this action.

Statutory and Executive Order Reviews

Under Executive Order (EO) 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and is therefore not subject to review by the Office of Management and Budget (OMB). The corrections do not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Because EPA has made a “good cause” finding that this action is not subject to notice and comment requirements under the APA or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of the UMRA.

The corrections do not have substantial direct effects on the states, or on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in EO 13132, Federalism (64 FR 43255, August 10, 1999).

This action also does not significantly or uniquely affect the communities of tribal governments, as specified by EO 13175, Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 9, 2000). The corrections also are not subject to EO 13045, Protection of Children from Environmental Health and Safety Risks (62 FR 19885, April 23, 1997) because this action is not economically significant.

The corrections are not subject to EO 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001) because this action is not a significant regulatory action under EO 12866.

The corrections do not involve changes to the technical standards related to test methods or monitoring methods; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply.

The corrections also do not involve special consideration of environmental justice-related issues as required by EO 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the Federal Register. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to

publication of the rule the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 80

Environmental protection, Administrative practice and procedure, Agriculture, Air pollution control, Confidential business information, Diesel fuel, Energy, Forest and forest products, Fuel additives, Gasoline, Imports, Labeling, Motor vehicle pollution, Penalties, Petroleum, Reporting and recordkeeping requirements.

Dated: April 8, 2013.

Gina McCarthy, Assistant Administrator,

Office of Air and Radiation.

40 CFR part 80 is amended as follows:

PART 80-[AMENDED]

1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7521(1) and 7601(a)

2. Section 80.1454 (k)(1) introductory text and (k)(2) introductory text are revised to read as follows:

§ 80.1454 What are the recordkeeping requirements under the RFS program?

* * * * *

(k)(1) Biogas and electricity in pathways involving feedstocks other than grain sorghum. A renewable fuel producer that generates RINs for biogas or electricity produced from renewable biomass (renewable electricity) for fuels that are used for transportation pursuant to § 80.1426(f)(10) and (11), or that uses process heat from biogas to generate RINs for renewable fuel pursuant to § 80.1426(f)(12) shall keep all of the following additional records:

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(2) Biogas and electricity in pathways involving grain sorghum as feedstock. A renewable fuel producer that produces fuel pursuant to a pathway that uses grain sorghum as a feedstock shall keep all of the following additional records, as appropriate:

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